



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 02-949
April 24, 2002

Wireless Telecommunications Bureau Seeks Comment on Petition Filed by AirCell, Inc. for Extension of Waiver

Docket No. 02-86

Comments Due: May 15, 2002

Reply Comments Due: May 28, 2002

On March 28, 2002, AirCell, Inc. and its partners (AirCell) filed a petition requesting that the Commission extend its waiver of Section 22.925 of the Commission's rules, 47 C.F.R. § 22.925.¹ The current waiver expires on June 9, 2002, and AirCell requests that it be extended indefinitely, or, in the alternative, for a period of ten years. In addition, AirCell requests that the limitations in the current waiver, limiting it to six analog channel pairs at any given ground station, be increased to allow operation on up to 19 channel pairs where necessary and that AirCell operations be permitted on channels where cellular carriers are using digital technology as well as analog.

AirCell and its partners operate, pursuant to the current waiver of Section 22.925, a system using cellular telephone equipment specially designed to provide service to customers on board aircraft without causing harmful interference to terrestrial cellular systems. The Wireless Telecommunications Bureau (Bureau) originally issued a waiver to AirCell on December 24, 1998, which permitted operation on six analog channel pairs at any given ground station for a period of two years.² The Commission upheld the waiver and extended the expiration date to June 9, 2002.³

¹ See In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or in the Alternative, for a Declaratory Ruling (filed March 28, 2002).

² See In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or in the Alternative, for a Declaratory Ruling, *Order*, 14 FCC Rcd. 806 (WTB 1998), recon. granted in part, denied in part, 14 FCC Rcd. 19430 (WTB 1999).

³ See In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or in the Alternative, for a Declaratory Ruling, *Memorandum Opinion and Order*, 15 FCC Rcd. 9622 (2000), *pet. for review granted in part, denied in part, sub nom. AT&T Wireless Services, Inc., v. FCC*, 270 F.3d 959 (D.C. Cir. 2001). On appeal from the Commission, the United States Court of Appeals for the D.C. Circuit rejected petitioners' claim that the Commission had unlawfully modified their licenses, but remanded the case to the Commission to further explain certain of the technical grounds

In its request, AirCell states that extension of both the waiver period and the scope of the waiver is necessary for the continued provision of a service that is in the public interest. AirCell contends that the standard for issuance of a waiver is met in this case by the special circumstances presented, *i.e.*, the use of equipment specifically designed to avoid the harmful interference that is the underlying purpose of the rule.⁴ AirCell also states that the grant of its request would allow it to provide additional services, including provision of real-time weather and air-traffic data, emergency communications, cockpit and cabin monitoring, and passenger communications. Specifically, AirCell requests that: 1) the waiver period be extended to allow operation indefinitely, or in the alternative for a period of ten years; 2) it and its partners be permitted to operate on up to 19 cellular channel pairs per ground station rather than the currently authorized six pairs; and 3) they be authorized to operate on channels used by carriers for digital terrestrial cellular operations.

We seek comment on whether granting AirCell's request would further the public interest. Parties wishing to file comments must do so on or before May 15, 2002. Reply comments must be filed on or before May 28, 2002. All comments should reference AirCell's waiver request, and include the DA number of this Public Notice, DA 02-949. We note that the Commission may act on the request to extend the waiver separately from the request to modify the terms of the waiver.

The Petition is available for public inspection and copying in the Commission's Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, DC 20554. Copies of the Petition are also available from Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at qualexint@aol.com. Copies of the Petition also may be obtained via the Commission's Electronic Comment Filing System (ECFS), which is accessible at which is accessible at <http://www.fcc.gov/e-file/ecfs.html>, by entering the Docket Number of this proceeding, Docket No. 02-86.

Under the Commission's current procedures for the submission of filings and other documents,⁵ submissions in this matter may be filed electronically by ECFS or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**⁶ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the

for its decision. The remand is currently pending before the Commission, and will be addressed separately. Therefore, we do not seek comment on remand issues in this *Public Notice*.

⁴ See 47 C.F.R. § 1.925(a)(3).

⁵ See *In the Matter of Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, FCC 01-345 (rel. Nov. 29, 2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, DA 01-2919 (rel. Dec. 14, 2001).

⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

- **If filed by paper**, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must also be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); (2) Leon Jackler, Commercial Wireless Division, Wireless Telecommunications Bureau, at ljackler@fcc.gov, or (202) 418-7447 (facsimile).

For further information, contact Leon Jackler, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0946.

- FCC -